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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 161 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
ANARKALI SARABHAI TRUST N0.11

Appearance:
1. INCOME TAX REFERENCE No. 161 of 1990
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
MR RK PATEL FOR MR KC PATEL for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of assessment year 1982-83 :

"Whether, the Appellate Tribunal is right in law and on facts in holding that there was no transfer in the present case and therefore there was no taxable capital gains ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the revenue and Mr.R.K.Patel for the respondent assessee.

3 The order of the Tribunal giving rise to this reference followed the Tribunal's order dated 15/10/1988 in the case of Leena Sarabhai. A reference was made from the said decision of the Tribunal and by judgment dated 1/3/1994 in the case of C.I.T. vs. Leena Sarabhai, reported in (1996) 221 ITR 520, for the reasons recorded therein, this Court noted that the department had accepted the position that in such type of cases there is no transfer of capital asset within the meaning of section 2(47) of the I.T.Act, and accordingly this Court declined to answer the similar question.

4 Following the aforesaid decision, we also decline to answer the question.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt